(1) Supreme Court, U.S.
FILED
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No. 99-_____

In The

Supreme Court of the United States

October Term, 1999

I. PARKER HUFF,
Petitioner,

v.

NORTHWEST SAVINGS BANK,
f/k/a:
FIRST NATIONAL BANK OF CONTRE HALL,
Respondant.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Third Circuit

---

PETITION FOR A WRIT OF CERTIORARI

I. Parker Huff, Pro Se

258 Toftrees Avenue #115
State College, Pa. 16803
(814) 237-1984
Petitioner

Dated: January 3, 2000

60pp

QUESTIONS PRESENTED

1. Whether it is clear error when the bankruptcy court omits necessary and critical facts of record from it's findings and conclusions, resulting in an ultimate unpublished decision that squarely contradicts the prior published holding of the 3rd Circuit that is directly on point, thus requiring remand with instructions?

2. Whether, the bankruptcy court failure to hold the required Bankruptcy Rule 9020(b) hearing, mandated by the United States Supreme Court, pursuant to motion for contempt, for contemptuous acts committed outside the presence of the court, is clear reversible error?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, I. Parker Huff, respectfully Prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The court of appeals' opinion is not reported and is reprinted herein at Appendix A. pages 7a - 11a.

JURISDICTION

The court of appeals' opinion affirming the judgement of the District Court was issued on September 10, 1999. A timley petition for rehearing was denied on October 6, 1999. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, Section 8, Clause 4: "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

United States Constitution Amendment 5: "No person shall be ... nor be deprived of life, liberty, or property, without due process of law."

United States Constitution Amendment 14, Section 1: "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

11 U.S.C. § 524(a)(1,2):

> "(a) A discharge in a case under this title-
>
> (1) voids any judgement at any time obtained, to the extent that such judgement is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process,

or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived;"

11 U.S.C. § 105 (a):

"The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

BANKRUPTCY RULE 9020 (b):

"OTHER CONTEMPT. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and

describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense..."

STATEMENT OF THE CASE

This case presents two important issues of federal civil law, both of which directly conflict with relevant published decisions of the Third Circuit and of this Court. The facts necessary to presenting these issues are stated as follows:

Overview prior to judgement in question

I. Parker Huff, purchased a farm and other real estate in Centre County, Pennsylvania, and executed a mortgage and note to the Northwest Savings Bank. After years of subdividing and developing the real property, Huff defaulted on his mortgage and the bank obtained a foreclosure judgement on May 4, 1989.

In June 1990, Huff filed a Chapter 11 Petition in Bankruptcy (Docketed at 1-90-00917RJW). The Bank filed several adversarial actions in Bankruptcy Court attempting to further their position and prevent Huff from reorganizing and

subdividing his real property. On June 18, 1993, the Bankruptcy Court lifted the automatic stay, and on June 24, 1993, Huff was Granted Discharge in Bankruptcy.

The Bank's Action in violation of The Discharge Order

On August 5, 1993, the Bank filed petition in state court to amend their pre-petition foreclosure judgement. The petition contained over thirty new post-discharge claims including contract interest, bankruptcy court fees and litigation fees, and other non-foreclosure related costs, for which, the Bank possessed no legal basis after judgment and had no existing or prior judgment to base them upon. All of which are barred by 41 P.S. § 406 and are void by 11 U.S.C. § 524 (a) (1,2).

Despite Huff's discharge in bankruptcy, on September 17, 1993, the state court granted the amended judgement including the post-discharge claims for costs and fees prohibited by 11 U.S.C. § 524 (a)(1,2), and the Bank proceeded to prosecute this new judgment through foreclosure and sheriff's sale.

The Motion For Contempt

On June 12, 1998, Huff filed, in the

Bankruptcy Court, a motion for contempt and sanctions against the Bank alleging the Bank's violation of both Pennsylvania State Usury Law and the Bankruptcy Court's order of discharge by seeking to obtain a new judgment against Huff post-discharge to secure pre-bankruptcy claims.

Huff's motion set forth over thirty claims the Bank made in their post-discharge petition that had no lawful basis in either the 1989 foreclosure judgment nor in Huff's mortgage and there were no other agreements or contracts between Huff and the Bank.

On June 16, 1998, the Bankruptcy Court gave notice to the Bank pursuant to Rule 9020 (b) and set a hearing on the motion for July 15, 1998. The Bank filed their answer on July 8, 1998.

The Mandatory Hearing was Never Held

On July 14, Huff received a fax changing the July 15th hearing to a "pre-trial phone conference". On August 20, 1998, Huff filed a Memorandum in support of his motion setting forth the Court's authority to hear the motion, the elements of the contempt, the facts of record in the bankruptcy court, the court's authority over Pennsylvania Usury Law, and demand for scheduling the hearing that was

continued.

On September 10, 1998, the Bankruptcy Court dismissed Huff's motion and on September 29, 1998 denied Huff's motion for reconsideration.

The Bankruptcy Court Omitted Critical Facts of Record From It's Finding and Conclusions

In it's Order and findings of September 10, the Bankruptcy Court omitted the following facts of record: (1) Huff's mortgage provides no clause or intent to provide for any post-judgment claims; (2) Huff's mortgage was reduced to foreclosure judgment on August 5, 1989 (prior to his bankruptcy filing); (3) the Bank's foreclosure judgment does not provide for or intend to provide for any post-judgment claims, and (4) Huff's note was discharged on June 24, 1993 and does not provide for any post-judgment claims or security interests. Copies of the mortgage, note, and foreclosure judgment, were introduced by the Bank at hearing and were accepted into evidence by the Bankruptcy Court.

Although raised by Huff in his motion, in the pre-trial conference and in his memorandum, these facts of record were never included in the bankruptcy court's findings or conclusions and were not taken

into considered by the bankruptcy court in it's decision and likewise were ignored by both the District Court and Third Circuit on appeal.

Clearly, it is the omission of these facts of record that allows the Bankruptcy Court to reach wrong conclusions resulting in clear error to the Bankruptcy Court and the appellate courts.

JURISDICTION BELOW

The United States Bankruptcy Court for the Middle District of Pennsylvania exercised subject matter jurisdiction in this matter pursuant to 28 U.S.C.A. §§ 157 (b), 1334 (b).

The United States Court of Appeals for the Third Circuit has appellant jurisdiction over this final Order of the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C.A. § 158 (d). The United States District Court for the Middle District of Pennsylvania exercised appellate jurisdiction pursuant to 28 U.S.C.A. § 158 (a).

REASONS FOR GRANTING THE WRIT

I. There is NO lawful Basis for the Claims in Bank's Petition

The Third Circuit Court of Appeals, in its published opinion set forth *In re Stendardo, 991 F.2d 1089 (3rd Cir. 1993)* at 1095-1097, clearly holds, that under Pennsylvania Law, a mortgage merges into a foreclosure judgment and no longer provides a basis for claims between the parties.

In Stendardo at page 1094 the Third Circuit holds: ""Under controlling Pennsylvania Law. "It is elementary that judgment settles everything involved in the right to recover, not only all matters that were raised, but those which might have been raised. The cause of action is merged in the judgment which evidences a new obligation." Lance v Mann, 360 Pa. 26, 60 A.2d 35, 36 (1948) (citations omitted). The doctrine of merger of judgments thus provides that the terms of a mortgage are merged into a foreclosure judgment and thereafter no longer provide the basis for determining the obligations of the parties. citing In re Presque Isle Apartments, 112 B.R. 744, 747 (Bankr.W.D.Pa.1990)."

The primary conflict between the Huff Panel's opinion, and the Stendardo opinion, is that the Huff Court allows a post-foreclosure judgment action for new post-discharge claims consisting of contract interest, insurance premiums, and non-foreclosure costs, to survive merger of the mortgage into the foreclosure judgment (App. B Page 3b) where the Stendardo court does not; where: both mortgages had merged into the judgments; neither mortgages (App. B Pages 1b-2b) nor notes contained any clause or provision for any post-judgment claims; and NO other contracts, agreements or revivals between the parties exists. The Huff panel's holding clearly flies in the face of the Third Circuit's Stendardo decision.

In paragraph #3, page 2 of its opinion (App. A, p. 8a), the Huff panel concludes, that in August 1993, "The Bank then filed in the state court a petition to amend it's 1989 foreclosure judgment to include accrued interest and costs of litigation." This conclusion assumes that the "interest" the Bank had sued for, was accrued interest and not contract interest, and that the "costs of litigation" was for foreclosure costs and not insurance premiums and other non-foreclosure bankruptcy litigation fees and costs.

This conclusion is simply wrong. Because the Bankruptcy Court failed to include the facts surrounding the claims sued for by the Bank in its August 1993 petition in its findings, ignored the legal effect of merger of the mortgage, and the lack of a lawful basis for the claims (See Appendix to Appeal to the Third Circuit Court of Appeals; Bank's proof of claim, pages 35-42, and admission into evidence, page 43; Petition of August 5, 1993, pages 69-89).

Both, the Bankruptcy and District Courts had copies of the Bank's original petition in their records below. Reading the petition (App. B Pages 4b-13b) reveals that, the Bank had sued Huff POST-JUDGMENT for "Contract Interest", insurance premiums, and other non-foreclosure costs of bankruptcy court litigation that had occurred during the course of automatic stay and had nothing to do with any foreclosure action.

Clearly, the Huff panel has never applied the holdings in Stendardo and Presque Isle to the Huff case with respect to Bank's claims in their alleged "Petition to amend Judgment"; ie., in Stendardo at page 1097, post-judgment insurance premiums did not survive merger of the mortgage into the foreclosure judgment; whereas, in the Huff matter not

only did the panel allow post-judgment insurance premiums survive the merger of the mortgage into the foreclosure judgment, but they became a judgment against Huff after merger, after discharge, and despite the fact that Huff was NEVER required to carry any insurance by the original mortgage or any other agreement.

Further, as held in Stendardo at page 1095, citing Presque Isle 112 B.R. 744 at 747, "For example, bankruptcy courts have consistently held that the doctrine of merger under Pennsylvania Law entitles a mortgagee post-judgment to the legal rate of interest rather than the rate specified in the mortgage. Because the mortgage merges into the judgment, its terms specifying the contractual interest rate no longer exist to bind the parties."

Clearly, this holding is the complete OPPOSITE of the opinion of the Huff panel. In the Huff matter, Huff's mortgage was merged into the judgment in 1989 (as in Presque Isle), the mortgage contains no provision for post-judgment interest (as in Presque Isle), the judgment contains no provision for any interest rate (as in Presque Isle), and Huff received his discharge in June 1993 (as in Presque Isle).

However, unlike the Presque Isle case, the Bank was allowed to sued Huff in August 1993 in state court for Contract Interest on Huff's note, and they did obtain a judgment against Huff for the contract interest despite Huff's June 1993 discharge. Clearly, given the Third Circuits holdings in Stendardo, the Bank had NO lawful basis to sustain a prosecution for contract interest after the merger of Huff's mortgage into the foreclosure judgment in 1989, and the grant of judgment for contract interest against Huff was with disregard for Huff's Discharge and Pennsylvania Law.

Both, Huff and Stendardo have mortgages with similar language and neither provides for any post-judgment interest or expenses; both mortgages were reduced to judgment in mortgage foreclosure; both have NO other agreements,contracts, or revivals between the parties; and both had received discharges in bankruptcy.

Unlike the Stendardo case, in the Huff case, the Bank was allowed to sue Huff personally, under the disguise of a petition to amend judgment, in an attempt to obtain a judgment against Huff to secure some forty seven unsecured claims rising from other bankruptcy court litigation. Again there was no longer a

mortgage to secure these "claims". All of these claims are set forth as causes of actions in Huff's Motion for Contempt in the present matter.

All of these "claims" including but not limited to, consulting fees, witness fees, appraisal fees, and costs of bankruptcy litigation, etc., occur during the course of the automatic stay, and by definition, could not possibly be mortgage foreclosure costs, because the Bank would have to admit to deliberately violating the Automatic Stay.

Nonetheless, the state court granted the petition even though Huff had received his Discharge, even though the mortgage had been merged into the judgment, and despite the fact that, these claims are prohibited by Pennsylvania's Act 6 and the holdings of the Stendardo Court.

II. Action Barred by 11 U.S.C. § 524 Discharge Injunction

The Bank's action had no lawful basis, their mortgage had merged into the foreclosure judgment in 1989 and no longer provided a basis for the action. Without a lawful basis rising from the mortgage or foreclosure judgment, all of the Bank's claims made in the petition are unsecured claims against Huff personally, and as

such, their prosecution violates the automatic stay, **11 U.S.C. §362**, and Huff's discharge, **11 U.S.C. §524**.

Given the holding in Stendardo, the Huff court is wrong in concluding on page 4 (App. A p. 11a) that, "...the Bank did not attempt to hold Huff personally liable...and did not violate the order of discharge." This is supported in Matter of Paeplow, 972 F.2nd 730, (7th Cir. 1992), at 735, citing In re Hunter, 970 F.2nd at 310, "...reducing their claim to a judgment requires establishing Paeplow's personal liability on the promissory note, something clearly barred by § 524."

Furthermore, In RE Pavelich, 229 B.R. 777 (9th Cir. BAP 1999) at 781-783, the defense of discharge is a "...absolute defense that relieved a discharged debtor from the need to defend a subsequent action in state court. ***See H.Rep. No. 91-1502, 91st Cong. 1-2 (1970); S.rep. No. 91-117, 91st Cong. (1970); 116 Cong.Rec. 9549 (1970)(Statement of Cong. Wiggins).***

Thus, all judgments purporting to establish personal liability of a debtor on a discharged debt, including judgments obtained after bankruptcy, are void to that extent, They are not voidable, they are void ab initio as a matter of federal statute."

Clearly the bankruptcy erred in its conclusions by ignoring the effect of Huff's discharge upon the Bank's actions, in that § 524 (a) discharge is an exception to the Full Faith and Credit Statute. 28 U.S.C. § 1727. As an exception to *Rooker-Feldman*, (See, Kalb v. Feuerstein, 308 U.S. at 438-40, 60 S.Ct. 343), "vacating such a judgment...does not intrude upon the notion of mutual respect in federal-state interests." James v. Draper, In re James), 940 F.2nd 46, 52 (3rd Cir. 1991).

III. Motion for Contempt

Huff's original Motion for Contempt filed in the Bankruptcy Court on June 12, 1998, sets forth the three required elements of contempt: 1. the Discharge Order was issued by the Bankruptcy Court in this case on June 24, 1993; 2. The Bank was given Notice of said Discharge Order by the Court and had knowledge of it's legal effect upon them; and 3. On August 5, 1993, The Bank violated said order by suing in State Court for claims against Huff pursuant to the note and mortgage AFTER the mortgage merged into the judgment and AFTER Huff's discharge, thereby constituting the contempt thereof.

Furthermore, the Bankruptcy Court had full knowledge that Huff's mortgage had

merged into the judgment, and that there was no lawful basis for the Bank's state court August 5, 1993 claims.

Further, the Bankruptcy Court had admitted a copy of Huff's mortgage and the foreclosure judgment into evidence in a 1991 Bankruptcy Court Hearing, and had at least two copies of the Bank's August 5, 1993 petition that were filed in the record below, in the present matter, prior to its ruling to dismiss.

This clearly satisfies the three elements needed to establish a Motion for Contempt as set forth and required by the Third Circuit in Roe, et al. v Operation Rescue, 54 F.3d 133, 137 (3rd Cir. 1995), and clearly CONTRADICTS the Bankruptcy Court's dismissing Huff's Motion for Contempt, as affirmed by the Huff Panel at page 2 of their opinion, and must be reversed and remanded.

The conflicts rising from the panel's opinion in the Huff matter, when viewed with respect to the Third Circuits holdings in Stendardo decision, clearly demonstrate that in the present matter, the Bankruptcy Court, the District Court and the Huff Panel were in clear error in ignoring the merger of Huff's mortgage into the foreclosure judgment, ignoring the effect of Huff's discharge and

ignoring the lack of a lawful basis for the claims made by the Bank in their 1993 petition.

These omissions make it impossible for the Bankruptcy Court to render meaningful conclusions of law in the first instant, and the lack of meaningful conclusions of law by the Bankruptcy Court lead only to further erroneous review by the District Court and the Huff Panel, thus fully meeting the standards for review and reversal. In re Siciliano, 13 F.3rd 748, 750 (3rd Cir. 1994) (citations omitted); In re Brown, 951 F.2nd 564, 567 (3rd Cir. 1991).

Not only have the courts OMITTED these material facts that were admitted into evidence, but the courts have clearly failed to apply these facts and the Stendardo holdings to the Bank's 1993 "petition".

Clearly, in that action the Bank willfully and purposely abused a process of court to circumvent **§524** of the Code in an attempt to prosecute unsecured discharged claims against Huff post-judgment, in an effort to obtain a judgment and then create a lien and collect the uncollectible. "Discharge should protect debtors not only against improper rulings, but against improper

proceeding ab initio." In re Jacobs, Bankr.N.D.Okla. 1993, 149 B.R. 983.

This action by The Bank is a prime example of the type of act that Congress and the courts so often state is the fundamental reason that the discharge injunction is the cornerstone of the "Fresh Start" principle. Clearly, having no legal basis, both the "petition" of August 5, 1993, and the "judgment" of September 17, 1993 obtained by the Bank violate the discharge injunction, and are not only Void, but a violation of the Constitutional Powers of Congress[1].

IV. Bankruptcy Court's Failure to Hold Required Hearing

Rule 9020 governs two types of contempt clearly differentiated by the N.D.Ill., In re Alpern, 191 B.R. 107,

[1] "Power of Congress to establish uniform laws on subject of bankruptcy throughout the United States is unrestricted and paramount, and necessarily excludes state regulation, preventing states from passing or enforcing laws to interfere with or complement Bankruptcy Act, former 11 USCA Sec. 1 et. seq., or provide additional or auxiliary regulations." International Shoe Co. v. Pinkus, 1929, 49 S.Ct. 108, 278 U.S. 261, 73 L.Ed.318.

111, "**Rule 9020(a)** states that a bankruptcy judge may make a summary determination of contempt when a violation is committed in his presence." and citing the necessity for the evidentiary hearing, "Rule 9020(b) states that a bankruptcy judge may make a determination of contempt for actions outside of his presence, **so long as he provides notice and a hearing**." Id.

This view is supported by the E.D.Pa., In re Shervin, 200 B.R. 109, 112, (E.D.Pa. 1996), "Bankruptcy rule 9020 requires an evidentiary hearing prior to the imposition of sanctions for contempt that occurs outside the presence of the court. **Fed. R. Bankr. P. 9020(b)**. During the requisite hearing, the complainant must establish a prima facie case of contempt by clear and convincing evidence, which shows that a clear and specific enforceable order unambiguously commands a party to preform or refrain from performing in accordance therewith. and citing In re Affairs with a Flair, Inc., 123 B.R. 724, 727 (E.D.Pa. 1991). The burden then shifts to the contemnor to come forward with evidence to show a present inability to comply with the court's order. Id."

Huff,s Motion for Contempt sets forth contempt occurring post-discharge in state

court, where the Bankruptcy Judge was neither present nor a party to the action. The words in **Rule 9020 (b)** "...**only after a hearing on notice**." clearly make the hearing on notice mandatory and not permissive.

Huff, having met the requirements of Rules 9014 and 9020, filed his Motion for Contempt and certificate of service. The Bankruptcy Court gave Notice to The Bank on June 16, 1998 setting the hearing for July 15, 1998 at 3:00 p.m. giving The Bank 29 (twenty nine) days to prepare.

The day before the hearing, Huff received a fax from the bankruptcy court at 10:02 a.m. setting a "a pre-trial phone conference only" for July 15. Huff immediately phoned Goodling to confirm that he had testimony and evidence, and she confirmed that as per the fax, that the conference call on July 15 would be in fact "a pre-trial phone conference only" (App. Page 90). On July 15, the phone conference took place, as the Docket shows (App. Page 30) no record was made, no one was sworn in, no testimony was taken, and no evidence was given.

Clearly, examination of the trial court Docket shows;(1) the Bankruptcy Court never held the required evidentiary hearing pursuant to Rule 9020 (b); (2)

Huff was denied the right to the required hearing to present evidence, give testimony, or cross examine and test The Bank's Answer, Memorandum or Appendix; and (3) the Court ruled on September 9, 1998 without first holding the mandatory hearing and in direct conflict with the holdings of the E. D. of Pennsylvania In re: Shervin and In re: Affairs with a Flair, Inc. and the N. D. of Illinois In re: Alpern. Further, there is nothing in the Rules of Court, Bankruptcy or Federal that permits a "pre-trial phone conference" to be substituted for a required evidentiary hearing.

The error is clear, Bankruptcy Court **Rule 9020 (b)** clearly requires a hearing when contempt or acts of contempt occur outside the view of the court, the acts of contempt have occurred post-discharge in state court, the trial court docket proves no hearing was held, the trial court lacked the authority to rule, the District Court failed to review the error of the trial court, and the Orders below must be vacated and the matter remanded to the trial court for hearing.

CONCLUSION

For the reasons stated herein, this Petition for Writ of Certiorari should be

granted. The conflict between the Stendardo decision and Huff decision is very clear. If the Huff Decision is allowed to stand, there is no telling how "creative" the next greedy banker and what all costs and expenses he will add on to the next foreclosure without legal basis.

We have laws governing mortgage lending and mortgage foreclosure. If this abuse goes unchecked; WHERE WILL IT ALL STOP!!!

Respectfully submitted,

I. Parker Huff

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(814) 237-1984

Dated: January 3, 2000

APPENDIX A

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UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:	*	
	*	
I. Parker Huff,	*	Case No.
Debtor	*	1-90-00917
	*	
I. Parker Huff,	*	Chapter 7
Movant	*	
	*	
v.	*	
	*	
Northwest Savings Bank	*	
f/k/a First National	*	
Bank of Centre Hall,	*	
Respondent	*	

ORDER

The background for this order is as follows. On June 4, 1990, the Debtor filed a Petition in Chapter 11 in order to stop a sheriff's sale of certain real estate which he had purchased as an investment. When the Debtor was unable to confirm a plan of reorganization, his case was converted to Chapter 7 on October 8, 1992. By Order of June 18, 1993, I allowed the automatic stay to lift so that the above-captioned Respondent could proceed with its action to foreclose on the property. On June 24, 1993, I entered an Order of Discharge in Chapter 7.

On April 22, 1994, the Debtor filed another Petition for Chapter 11 protection,again in order to stop a sheriff's sale of his investment property. On May 19, 1994, I issued an Order granting the Respondent relief from the stay so that it could duly hold its foreclosure sale which was scheduled for May 24, 1994. The sale took place as scheduled.

From these Orders, the Debtor took numerous appeals to the various appellate courts of both the state and federal governments. None of them were successful.

The Debtor now seeks sanctions to be imposed against the Respondent for its actions in filling a petition in state court, in August 1993, to amend its foreclosure judgment. The Debtor contends that these actions violate the permanent injunction imposed by the discharge order. The Debtor also challenges various costs which the Respondent incurred throughout its litigation with the Debtor. The Respondent denies that sanctions should be imposed against it, but it requests sanctions against the Debtor for the filing of frivolous and vexatious pleading.

Sanctions are not chargeable against the Respondent. The Respondent has provided me with copies of some of the pleading it has filed in the state court,and the orders of the state and

federal courts. There is no indication that the Respondent is attempting in any of these matters to impose personal liability against the Debtor himself. all proceedings about which the Debtor now complains are in rem actions against the foreclosed-upon property.

Sanctions against the Debtor, on the other hand, to reimburse the Respondent for costs incurred in defending the Debtor's unnecessary and redundant pleading, might easily be chargeable had they been requested through a Motion and with notice and opportunity for hearing provided to the Debtor. In the absence of these procedural steps, I cannot impose sanctions at this time. If I were to impose them, however, it is clear from the pleading alone that the amount of sanctions might well amount to many thousands of dollars. Such sanctions, of course, would be a personal liability of the debtor. It is my sincere hope that the Debtor will not further pursue these matters in this Court, thereby subjecting himself to the possibility of a substantial civil liability.

BY THE COURT

/s/Robert J. Woodside
Chief Bankruptcy Judge

Harrisburg, Pennsylvania
Dated: September 10, 1998

UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:	*	
	*	
I. Parker Huff,	*	Case No.
Debtor	*	1-90-00917
	*	
I. Parker Huff,	*	Chapter 7
Movant	*	
	*	
v.	*	
	*	
Northwest Savings Bank	*	
f/k/a First National	*	
Bank of Centre Hall,	*	
Respondent	*	

ORDER

AND NOW, this 29th day of September, 1998, the Motion to Alter or Amend or Grant New Hearing filed by the Movant captioned above is hereby denied.

BY THE COURT

/s/ Robert J. Woodside
Chief Bankruptcy Judge

Harrisburg, Pennsylvania
Dated: September 29, 1998

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

I. Parker Huff, Appellant	*	No. 4:CV-98-1782
v.	*	(Judge McClure)
Northwest Savings Bank f/k/a First National Bank of Centre Hall, Appellee	*	

ORDER

December 23, 1998

BACKGROUND:

On October 9, 1998, appellant I. Parker Huff commenced this action by filing a notice of appeal from orders of the bankruptcy court denying his motion for contempt and sanctions against appellee Northwest Savings Bank. Basically, Huff contends that the Bank improperly moved in state court proceedings to amend a judgment against him, despite his discharge in bankruptcy. Judge Woodside of the bankruptcy court found that the amendment was not affected by the discharge, which applies to personal liability, while the amendment sought by the Bank applies to in rem proceedings in state court. He therefore found that a finding of contempt and/or

the imposition of sanctions would not be appropriate.

Huff raises a number of issues, all of which are devoid of merit, and we see no reason for further discussion.

The Bank notes in its brief that it would like leave to move for sanctions. Leave is not required, regardless of the source of authority for the imposition of sanctions. See Fed. R. Civ. P. 11; Fed. R. App. P. 38; Bankr. R. 9011. Of course, there may be some question of timeliness, given that the orders of the bankruptcy court will be affirmed by this order.

However, like Judge Woodside, we note that a motion for sanctions may have considerable merit and could well be a costly matter for Huff. We suggest strongly that Huff heed Judge Woodside's advice that pursuing this litigation is not likely to be a fruitful undertaking.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The orders of the bankruptcy court dated September 10, 1998 (document 13 of record document no.2), and September 29, 1998 (document 15 of record document no.2) are affirmed.

2. The clerk is directed to close the file, and provide a copy of this order to Judge Woodside.

/s/ James F. McClure, Jr.
U. S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-7027

IN RE: I. PARKER HUFF, Debtor

v.

NORTHWEST SAVINGS BANK
f/k/a First National Bank of Centre Hall

I.Parker Huff, Appellant

On Appeal from the United States
District Court for the Middle
District of Pennsylvania
(D.C. Civ. No. 98-1782)
District Judge: Hon. James F. McClure, Jr.

Submitted Under Third Circuit LAR 34.1(a)
September 1, 1999

Before: SCIRICA, NYGAARD, and ALITO,
Circuit Judges

JUDGMENT

This case came to be heard on the record from the United States District Court for the middle district of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration where of, it is now here

Per Curiam.

I. Parker Huff appeals from the District Court's order affirming the Bankruptcy Court's denial of his motion for contempt and sanctions against Appellee, Northwest Savings Bank. We will affirm.

In 1985, the Bank lent Huff funds to purchase a farm and other real estate in Centre County, Pennsylvania. In 1989, after Huff defaulted on his mortgage payments, the Bank obtained a foreclosure judgment in the state court. In 1990, Huff filed in the Bankruptcy Court a Chapter 11 petition, which was later converted into a Chapter 7 proceeding. In 1993,the Bankruptcy Court lifted the automatic stay of the sale of the property and discharged Huff from any personal liability on the debt.

The Bank then filed in the state court a petition to amend its 1989 foreclosure judgment to include accrued interest and costs of litigation. The state court granted the petition.Eventually the property was sold through a Sheriff's sale. For several

years thereafter, Huff continued litigating the foreclosure and sale in the state and federal courts,but without success.

On June 12, 1998, Huff filed in the Bankruptcy Court a motion for contempt and sanctions against the Bank. Huff alleged that the Bank violated the Bankruptcy Court's 1993 order of discharge by seeking to amend the state court's 1989 foreclosure judgment. On September 10, 1998,after conducting a telephone conference,the Bankruptcy Court dismissed the motion. The Bankruptcy Court denied Huff's motion for reconsideration on September 29, 1998. By order entered December 23, 1998, the District Court affirmed the Bankruptcy Court's orders. Huff now appeals to this court.

First, Huff contends that the Bankruptcy Court committed reversible error by failing to conduct a hearing on his motion for contempt. Huff cites Bankruptcy Court Rule 9020(b) for the proposition that a hearing on his motion was required. This contention is without merit. Rule 9020(b) requires notice and a hearing before the Bankruptcy Court Determines that a party is in contempt. See Bankr.R. 9020(b); In re Terrebonne Fuel & Lube, Inc., 108 F3d 609,613 (5th Cir. 1997). The notice and hearing requirements are to protect the due process rights of the party against whom contempt is sought. See id.at 613-14.

Here, Huff filed a motion of contempt against the Bank; the Bankruptcy Court denied the motion. Huff was not entitled to a hearing under Rule 9020(b).

Huff next contends that the Bankruptcy Court committed reversible error by violating Bankruptcy Rule 9003(a)'s prohibition if ex parte contacts. According to Huff, these ex parte contacts included: (1) counsel for the Bank contacting the Bankruptcy Court to schedule a telephone conference; (2) the Bank's submission of state court pleading, dockets, and orders in answering Huff's motion for contempt and sanctions; and (3) the Bankruptcy Court's acceptance of evidence from the Bank without allowing Huff the opportunity to test the validity of the evidence.

These contentions lack merit. First, the Bank's contacts with clerical personnel of the Bankruptcy Court to schedule a telephone conference do not constitute improper ex parte communications. Moreover, by his own admission, Huff participated in the telephone conference. Next, the Bank served Huff with a copy of the appendix it filed containing the state court documents. Filing and serving an appendix containing the state court records to inform the Bankruptcy Court of the history of the case does not constitute ex parte contacts. Additionally, Huff was not denied the opportunity to test the

validity of these documents, which he erroneously calls evidence.

Finally, Huff contends that a finding of contempt and imposition of sanctions are warranted because the Bank sought to amend its foreclosure judgment in violation of the Bankruptcy Court's order of discharge. This contention is without merit. Under the order of discharge, Huff was released from all personal liability. See Johnson v. Home State Bank, 501 U.S. 78, 84 (1991> In seeking to amend its mortgage foreclosure judgment,the Bank has not attempted to hold Huff personally liable for any discharged debts. Rather, the Bank's mortgage judgment was purely in rem, see Insilco Corp. v. Rayburn, 543 A.2d 120,123 (Pa. Super. Ct. 1988), and the state court's amendment of that judgment did not impose any personal liability on Huff. In short, the Bank has in no way attempted to hold Huff personally liable and did not violate the order of discharge.

For these reasons,we will affirm the order of the District Court.

Dated Sept. 10, 1999.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-7027

IN RE: I. PARKER HUFF, Debtor

v.

NORTHWEST SAVINGS BANK
f/k/a First National Bank of Centre Hall

I.Parker Huff, Appellant

(D.C. Civ. No. 98-1782)

SUR PETITION FOR REHEARING

Present: BECKER, Chief Judge, SLOVITER, MANSMANN, GREENBERG, SCIRICA, NYGAARD, ALITO, ROTH, McKEE and RENDELL, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the

decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT
/s/ Scirica

Dated: October 6, 1999

APPENDIX B

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Page

Relevant paragraphs from mortgage from I. Parker Huff to First National Bank of Centre Hall, Dated November 21, 1985..... 1b

Praecipe for Entry of Default Judgment in mortgage foreclosure filed in Centre County Court of Common Pleas on May 3, 1989 and recorded on May 4, 1989..... 3b

Relevant excerpts from Petition to Amend Judgement..... 4b

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 90-00917RJW - I. Parker Huff Debtor..... 14b

Relevant paragraphs from mortgage from I. Parker Huff to First National Bank of Centre Hall, Dated November 21, 1985 and Recorded in the Recorder of Deeds Office in Centre County, Pennsylvania at Deed Book 341 Pages 966-969.

* * *

And it is further understood and agreed, that the said part Y of the first part, his heirs and assigns, will pay all taxes, municipal assessments and charges from time to time assessed against or upon said mortgaged premises forthwith when the same become due and payable, and will keep the buildings erected upon the said premises insured in some good and reliable incorporated stock insurance company or companies to the amount of at least _____-_(blank in original)_____ Dollars, and the policy or policies shall be assigned to and held by the said party of the second part, its successors or assigns, as collateral security for the payment of moneys secured hereby; and, in case said part Y of the first part, its heirs or assigns, shall neglect to procure such insurance, or shall neglect to pay said taxes, municipal assessments and charges forthwith when the same become due and payable, the said party of the second part, its successors or assigns, may take out such policy or policies in its own

name, and may pay such taxes, municipal assessments and charges, and the premium or premiums paid therefor, and the sum or sums paid for such taxes, municipal assessments and charges as aforesaid, shall bear interest from the time of payment, and be added to and collected as part of the said principal sum and in the same manner.

And it is further agreed and understood, that in case default be made at any time in the payment of any one of said installments of debt or interest, or any part thereof, or of any taxes, municipal assessments, charges or premiums of insurance aforesaid, for days after the same falls due as aforesaid, the whole of the said debt and interest shall, at the option of the said party of the second part, its successors or assigns, thereupon become due and payable, and an action of Mortgage Foreclosure may be properly commenced upon this Indenture of Mortgage, and prosecuted to judgement, execution, and sale, for the collection of the whole amount of the said debt and interest remaining unpaid, together with all premiums of insurance, and all taxes, municipal assessments and charges, and all fees, costs and expenses of such proceedings, including attorney's commission of_____ _(Blank)___ per cent. And all errors in said proceedings, together with all stay

of or exemption from execution, or extension of time of payment which may be given by any Act or Acts of Assembly now in force, or which may be enacted hereafter, are hereby forever waived and released.

* * *

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	Case No. 89-598
I. PARKER HUFF, Defendant	:	Mortgage Foreclosure

PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

TO: David Immel, Centre County Prothonotary

Kindly enter a default judgment in favor of plaintiff, First National Bank of Centre Hall, and against defendant, I. Parker Huff. I. Parker Huff has failed to file an answer or otherwise respond to the complaint filed in this matter and served on March 21, 1989. Default judgment is hereby requested as to principal in the amount of $145,850.60, plus loan interest through May 3, 1989 in the amount of $8,637.63, late charges of $90.00,and attorney's fees in the amount of $7,596.81, for a total judgment of $162,175.04. An Important Notice informing defendant of plaintiff's intention to enter default judgment was mailed to I.

Parker Huff on April 17, 1989. A copy of the same and the Certificate of Service thereto is attached hereto as Exhibit A.

/s/ Tracey G. Benson
Counsel for Plaintiff

Dated: May 3, 1989

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	Case No. 89-598
I. PARKER HUFF, Defendant	:	Mortgage Foreclosure

PETITION TO AMEND JUDGEMENT

* * *

5. As of June 1, 1993, defendant Huff owed to The First National Bank of Centre Hall, under the Note and Mortgage obligations forming the basis for this mortgage foreclosure action and the resulting Judgement, the amount of $228,099.82, exclusive of counsel fees incurred from January 18, 1993, to-date.

* * *

7. During the period from January 18, 1993, through July 14, 1993, the Centre Hall Bank incurred counsel fees of $2,653.95 in connection with debtor's attempts to avoid liquidation of his property as ordered by the Bankruptcy Court on

October 8, 1992. A copy of the invoice reflecting these costs is attached hereto as Exhibit D.

* * *

Exhibit C

PAYOFF AMOUNTS:

PRINCIPAL BALANCE	$142,459.06
INTEREST THROUGH 6/1/93	$ 71,026.12
COSTS AS OF 6/1/93	$ 14,614.64
TOTAL:	$228,099.82

DATE - AMOUNT OF CHECK - PAYABLE TO:

5/27/93	$ 359.80	FILIUS & MCLUCAS REPORTING
3/8/93	400.00	RUDOLPH REALTY
1/19/93	1,962.15	MILLER KISTLER & CAMPBELL
12/19/91	193.92	CENTRE CO. MUTUAL FIRE
12/4/91	4,482.42	MILLER KISTLER & CAMPBELL
5/29/91	175.00	RUDOLPH REALTY
3/8/91	3,228.60	MILLER KISTLER & CAMPBELL
3/8/91	796.00	GEO DECISIONS INC.
3/8/91	175.00	RUDOLPH REALTY
1/7/91	200.00	MILLER KISTLER & CAMPBELL
6/13/90	941.75	GARY KUNES, SHERIFF
2/13/90	900.00	MILLER KISTLER &

1/9/90	800.00	CAMPBELL MILLER KISTLER & CAMPBELL
TOTAL	$14,614.64	

(Photo copies of eight checks from First National Bank Of Centre Hall)

* * *

Exhibit D

Enclosed please find my statement for services rendered in connection with the bankruptcy proceedings involving Parker Huff, during the period from January 18, 1993 through July 14, 1993. The attorney fees have been billed at our rate of $75.00 per hour, and the enclosed statement sets forth the costs that we have advanced to this matter. Please contact me should you have any questions or need additional information in order to process this statement.

* * *

Please Pay This Amount $2,653.90

01/18/93 TGB - SERVE ORDER: DRAFT AND FILE OBJECTION TO CONTINUING STAY - .75 hr

02/10/93 TGB - STUDY ANSWER RECEIVED;

CALLS TO COURT AND G. FULTZ; LETTERS TO TRUSTEE AND G. FULTZ RE: HEARING: CHECK HUFF PROPERTY OWNERSHIP - 1.40 hr

02/16/93 TGB - ANALYZE DEEDS AND MAPS - .60 hr

02/17/93 TGB - STUDY LETTER RECEIVED RE: LAND PURCHASE ; LETTER RESPONSE - .30 hr

02/19/93 TGB - STUDY SUBDIVISION MAPS; CALLS TO C. SHIELDS AND R. RUDY - .40 hr

02/22/93 TGB - MEETING WITH R. RUDOLF RE: APPRAISAL UPDATE - .75 hr

02/23/93 TGB - STUDY LETTER RECEIVED: CALLS TO BANK and COURT- .25 hr

03/01/93 SLE - PREPARE AND LABEL EXHIBITS: DISBURSE MONEY TO TAX CLAIM, RECORDER.PROTHONOTARY'S OFFICE - 2.50 hr

03/01/93 TGB - PREPARE EXHIBITS: OBTAIN LIEN CERTIFICATES: STUDY NEW APPRAISAL: CALLS TO G. FULTZ AND R. RUDY - 3.40 hr

03/02/93 TGB - PREPARE PRESENTATION AND REPRESENT BANK AT COURT HEARING ON MOTION FOR RELIEF FROM STAY - 9.00 hr

03/03/93 TGB - CALL FROM TRUSTEE RE: STATUS; LETTER TO G. FULTZ - .40 hr

03/16/93 TGB - STUDY MOTION AND NOTICE RECEIVED; LETTER TO G. FULTZ - .60 hr

03/17/93 TGB - STUDY MOTION: DRAFT OPPOSITION; LETTERS TO COURT - 1.75 hr

03/23/93 TGB - REVISE AND FILE OPPOSITION TO MOTION - .75 hr

03/30/93 TGB - CALL AND LETTER FROM TRUSTEE - .30 hr

04/05/93 TGB - CALL TO TRUSTEE - .25 hr

04/13/93 TGB - STUDY LETTER RECEIVED; LETTER TO C. BREON - .40 hr

04/28/93 TGB - CALLS TO COURT. COUNSEL AND BANK RE: RESCHEDULED HEARING - .30 hr

04/30/93 TGB - STUDY NOTICE RECEIVED: LETTER TO G. FULTZ - .20 hr

05/08/93 TGB - PHONE CALLS TO COURT AND COURT REPORTER RE: DECISION STATUS - .40 hr

05/20/93 TGB - LETTER TO G. FULTZ RE: INVOICE - .25 hr

06/02/93 TGB - STUDY AFFIDAVITS RECEIVED: REPRESENT BANK AT COURT HEARING - 6.00 hr

06/21/93 TGB - STUDY MEMORANDUM AND ORDER:

CALL AND LETTER TO G. FULTZ - .75 hr

06/25/93 TGB - STUDY DISCHARGE RECEIVED: LETTER TO G. FULTZ - .25 hr

07/11/93 TGB - STUDY APPEAL: RESEARCH PROCEDURE; LETTER TO G. FULTZ: DRAFT PETITION TO AMEND Judgement - 2.20 hr

07/14/93 TGB - STUDY NOTICE RECEIVED: LETTER TO G. FULTZ: DRAFT DESIGNATION OF RECORD CONTENTS: LETTER TO COURT - 1.20 hr

Total Fees Billed...35.35 hr $2,551.25

---Costs Advanced---

01/13/93 COSTS ADVANCED MILEAGE TRAVELED TO SUNBURY FOR CREDITORS' MEETING (75 MILES)
- $.25 ea $18.75

01/14/93 COSTS ADVANCED DUPLICATED COPIES OF MOTION FOR RELIEF FROM AUTOMATIC STAY (44 COPIES)
- $.15 ea $6.60

03/01/93 COSTS ADVANCED DUPLICATED COPIES (72) OF EXHIBITS
- $.15 ea $10.80

03/02/93 COSTS ADVANCED DUPLICATED EXHIBITS FOR COURT (30 COPIES) - $.15 ea $4.50

03/23/93 COSTS ADVANCED DUPLICATED COPIES OF OPPOSITION OF FIRST NATIONAL BANK OF CENTRE HALL TO MOTION OF R.E. BREON & SONS TO CONVERT FROM CHAPTER 7 TO 11 (42 COPIES) - $ 15 ea $6.30

06/02/93 COSTS ADVANCED MILEAGE TRAVELED TO HARRISBURG FOR HEARING (200 MILES) - $.25 ea $50.00

06/02/93 COSTS ADVANCED PARKING FEE WHILE IN HARRISBURG FOR HEARING - $2.00

07/19/93 COSTS ADVANCED DUPLICATED COPIES OF APPELLEE'S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL (25 COPIES) - $.15 ea $3.75

Total Costs Advanced:	$102.70
Current fees and costs:	$2,653.90
For Professional Services:	$2,653.90

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 90-00917-RJW - I. Parker Huff Debtor

* * *

Date	Docket Number	Entry
08/03/90	#21	REPLY IN OPPOSITION TO DEBTOR'S MOTION FOR AUTHORIZATION TO SELL PROPERTY FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES with CERTIFICATE OF SERVICE filed. drr (filed by The First National Bank of Centre Hall) 9-13-90 mrp
11/06/90		HEARING ON OBJ. TO 11 SALE NOT HELD - matter continued generally per Tracey Benson, Esq. cls
01/10/91	#38	COMPLAINT OF THE FIRST NATIONAL BANK OF CENTRE HALL TO DISMISS OR CONVERT CHAPTER 11 CASE. 1/14/90 Check to be returned. 1/17/91 Check returned to attorney. mrp
06/12/91		HEARING HELD ON MOTION TO DISMISS OR CONVERT BY 1st Nation. test. taken - not ordered - Filius and McLucas Reporting - matter cont. till July 25, 1991 at 9:30 a.m. cls

07/22/91 Hearing rescheduled to August 20, 1991 at 9:00 a.m., re: Motion To Dismiss or Convert. mrp

08/20/91 HEARING HELD ON MOTION TO DISMISS OR CONVERT BY 1st NATIONAL - test. taken - transcript ordered - briefs to be filed 30 days after transcript - court to render decision- Filius and McLucas Reporting. cls

11/04/91 #65 BRIEF IN SUPPORT OF MOTION TO DISMISS OR CONVERT CHAPTER 11 CASE with CERTIFICATE OF SERVICE filed by The First National Bank of Centre Hall. drr

11/04/91 #66 THE FIRST NATIONAL BANK OF CENTRE HALL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW re: Motion to Dismiss or Convert Chapter 11 Case with CERTIFICATE OF SERVICE filed. drr

03/31/92 #74 MOTION OF THE FIRST NATIONAL BANK OF CENTRE HALL FOR RELIEF FROM AUTOMATIC STAY with CERTIFICATE OF SERVICE filed. paid 3/31/92 #040-935 $60.00 drr

06/24/92 #88 CORRESPONDENCE regarding the status of various contested matters re: The First National Bank of

Centre Hall filed by counsel for The First Natl. Bank of Centre Hall. drr

09/21/92 #99 MEMORANDUM OF THE FIRST NATIONAL BANK OF CENTRE HALL IN OPPOSITION TO DEBTOR'S MOTION FOR EXTENSION OF TIME TO OBTAIN COUNSEL with CERTIFICATE OF SERVICE filed. drr

10/05/92 #101 CORRESPONDENCE received on September 18, 1992 regarding Obtaining of Counsel, Motion to Dismiss or Convert and Motion for Relief from Automatic Stay of Centre Hall Bank filed by counsel for Centre Hall Bank. drr

10/07/92 #107 CORRESPONDENCE dated October 6, 1992 from Atty. Benson regarding the payment of junior unsecured creditors. las

01/19/93 #115 MOTION OF THE FIRST NATIONAL BANK OF CENTRE HALL FOR RELIEF FROM AUTOMATIC STAY filed with CERTIFICATE OF SERVICE re: Auto. Stay First National Bank of Centre Hall. ($60.00 fee paid, 01/19/93, rec. #503307) las T129

01/25/93 #117 CERTIFICATE OF SERVICE re: Auto. Stay-First National Bank of Centre Hall. las

01/25/93 #118 OBJECTION TO CONTINUANCE OF STAY filed with CERTIFICATE OF SERVICE re: Auto. Stay-First National Bank of Centre Hall. las

03/02/93 HEARING HELD ON AUTO STAY - RE: First National Bank - test. taken - not ordered - matter ready for decision - Filius and McLucas Reporting. cls

03/24/93 #122 OPPOSITION OF THE FIRST

NATIONAL BANK OF CENTRE HALL TO MOTION OF R.E. BREON & SONS, INC. PROF IT SHARING TRUST, TO CONVERT FROM CHAPTER 7 TO CHAPTER 11 filed with CERTIFICATE OF SERVICE re: Conversion to Chapter 7. las

03/24/93 #124 CORRESPONDENCE dated March 23, 1993 from Atty. Benson re: Auto. Stay - National Bank of Centre Hall. las

06/02/93 HEARING HELD ON MOTION TO CONVERT - testimony taken - matter ready for decision - testimony taken - not ordered - Filius and McLucas Reporting cls

06/18/93 #129 ORDER that the relief re-

quested by R.E. Breon & Sons, Inc., Profit Sharing Trust to Convert from Chapter 7 to Chapter 11 is DENIED and that the relief from the stay requested by the First National Bank of Centre Hall is GRANTED and the automatic stay is LIFTED with respect to real property. (cc: debtor, Trustee, Benson, Breon) las

06/24/93 #130 DISCHARGE OF DEBTOR(S). las

* * *

(2)
Supreme Court, U.S.
FILED
FEB 8 - 2000
CLERK

No. 99-1153

IN THE
Supreme Court of the United States

I. PARKER HUFF,

Petitioner,

v.

NORTHWEST SAVINGS BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

TRACEY G. BENSON
Counsel of Record
ELIZABETH A. DUPUIS
MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
Attorneys for Respondent
124 North Allegheny Street
Bellefonte, Pennsylvania 16823
(814) 355-5474

157742
Counsel Press LLC
(800) 274-3321 • (800) 359-6859

8pp

QUESTION PRESENTED

None of the questions as stated by petitioner are present in this case. The Petition is premised upon dissatisfaction with determinations of fact and law that were finally decided in prior litigation. Because the petitioner is attempting to re-litigate issues under the guise of a Motion for Contempt in the bankruptcy court, the question presented might more accurately and simply be stated:

1. Where the petitioner sought to re-litigate mortgage foreclosure and execution issues that were finally decided by the Pennsylvania courts in prior actions, did the bankruptcy court properly exercise its discretion in denying the frivolous Motion for Contempt?

STATEMENT PURSUANT TO RULE 29.6

In 1996, all of the outstanding stock in the respondent, The First National Bank of Centre Hall was acquired by Northwest Savings Bank. Northwest Savings Bank has two parent companies, Northwest Bancorp M.H.C. and Northwest Bancorp Inc. Only Northwest Bancorp M.H.C. owns 10% or more of the stock of the respondent.

The instant matter reflects petitioner's desire to re-visit mortgage foreclosure and execution issues previously litigated to finality in the courts of Pennsylvania. This Court subsequently denied review of those proceedings in *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 Pa. Super. (1995), *allocatur denied*, 681 A.2d 178 (Pa. 1996), *cert denied*, 520 U.S. 1210 (1997).

None of the considerations governing review on certiorari set forth in Supreme Court Rule 10 are present in this case. The decision below does not conflict with the decision of another court of appeals on the same matter, nor does it conflict with applicable decisions of this Court. The lower courts in this matter did not consider or decide any important question of federal law.

STATUTES INVOLVED

Petitioner incorrectly represents that the lower courts reviewed issues pertaining to the United States Constitution. No such issues were presented or addressed in the courts below. The statutory provisions contained in 11 U.S.C. § 524(a) and 11 U.S.C. § 105(a) were not considered by the bankruptcy court below. To the extent that the foregoing statutes were relevant to the prior litigation involving the mortgage foreclosure and execution proceedings, all issues properly raised were decided to finality in a manner adverse to the petitioner.

Although Bankruptcy Rule 9020(b) would be applicable to bankruptcy court contempt proceedings, this rule has no relevance to the real issues that petitioner seeks to raise before this Court.

STATEMENT OF THE CASE

A. Prior Litigation

In 1989, the respondent commenced foreclosure proceedings against petitioner in the Court of Common Pleas of Centre County, Pennsylvania. Following entry of a default

judgment, petitioner filed a Chapter 11 bankruptcy petition. The bankruptcy court issued an order in June, 1993, lifting the automatic stay. An execution sale was held on May 24, 1994.

Petitioner's attempts to set aside the sale were unsuccessful. The Superior Court of Pennsylvania affirmed the rulings of the trial court. *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 (Pa. Super. 1995). A Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was subsequently denied, as was a Petition for Writ of Certiorari to this Honorable Court. *Huff v. First National Bank of Centre Hall*, 681 A.2d 178 (Pa. 1996), *cert denied*, 520 U.S. 1210 (1997). The mortgage foreclosure and execution sale issues were thus litigated to finality.

The petitioner subsequently filed a new complaint in the state trial court alleging that the respondent had usuriously imposed interest in the prior mortgage foreclosure judgment. The respondent filed preliminary objections to the complaint contending that the petitioner had previously litigated those issues. The trial court sustained the preliminary objections and dismissed the action with prejudice. Petitioner subsequently appealed that decision to the Superior Court of Pennsylvania, which affirmed. *Huff v. Northwest Savings Bank*, No. 594 HBG 1998 (Pa. Super. Mar. 30, 1999), *allocatur denied,* No. 174 M.D. Misc. Dkt. 1999 (Pa. Oct. 27, 1999).

B. Present Litigation

On June 12, 1998, Petitioner filed a motion under Bankruptcy Rule 9020 seeking contempt and sanctions against the respondent for allegedly violating the bankruptcy stay invoked at the time of his original Chapter 11 filing in 1990. The respondent filed an Answer and a supporting Memorandum in Opposition to the Motion for Contempt. The bankruptcy court held a telephone conference on the matter and provided petitioner the opportunity to submit a letter brief in support of

his motion. Petitioner filed his brief with the court on or about August 20, 1998.

The bankruptcy court entered an Order dated September 10, 1998, dismissing petitioner's motion. Petitioner then appealed to the United States District Court of the Middle District of Pennsylvania. The decision of the bankruptcy court was affirmed by an order of the district court, Judge McClure presiding, entered on December 23, 1998. (Appendix to Petition at pp. 5a-6a). The decision of the district court was affirmed by the United States Court of Appeals for the Third Circuit on September 10, 1999. (Appendix to Petition at pp. 7a-11a). Petitioner filed the instant Petition for Writ of Certiorari on January 4, 2000.

REASONS FOR DENYING THE WRIT

Stated simply, the petitioner is not interested in the bankruptcy court's procedural handling of this matter. The instant petition reveals a desire to re-litigate state law issues pertaining to the prior mortgage foreclosure and execution against real estate. These issues were previously litigated to finality in a manner adverse to petitioner. The Petition fails to state any basis for this Court to exercise supervisory review of the bankruptcy court's disposition of a patently frivolous motion for contempt.

I.

THE ISSUES RAISED IN THE PETITION ARE NOT REVIEWABLE UNDER 28 U.S.C. § 1254 BECAUSE THEY WERE NOT PRESENTED TO THE COURT OF APPEALS AND ARE THEREFORE NOT PROPERLY BEFORE THIS COURT.

A grant of certiorari by this Court is precluded when the issues for which review is sought were "not pressed on by the courts below." *United States v. Williams*, 504 U.S. 36, 42 (1992),

citing Springfield v. Kibbe, 480 U.S. 257, 266 (1987) (dissenting opinion). If a petitioner attempts to raise constitutional arguments not previously raised, such issues will not be considered by this Court as they were not adjudicated in the court below. *Beck v. Washington*, 369 U.S. 541, 549-53 (1962). Review of issues not previously raised can be granted only under exceptional circumstances. *Duignan v. United States*, 274 U.S. 195, 200 (1927).

The arguments raised in pages 9 through 16 of the Petition were not properly before the bankruptcy court below. In the instant case, the lower courts did not consider any substantive issues pertaining to the mortgage foreclosure or execution proceedings conducted in the state trial court. Those issues were litigated to finality in the earlier case and are not properly before this Court for review.

II.

THE BANKRUPTCY COURT'S DENIAL OF THE FRIVOLOUS MOTION FOR CONTEMPT RAISES NO ISSUES APPROPRIATE FOR CONSIDERATION BY THIS COURT.

A grant of certiorari is proper where an issue presented is important in the administration of the Bankruptcy Code, or where an issue of first impression is presented to the court. *Reading Company v. Brown*, 391 U.S. 471, 475 (1968). This Court does not ordinarily review the lower court's application of a rule of procedure when the issue "concerns the judgment of the District Judge in relation to a particular set of facts." *Appalachian Power Company v. American Institute of Certified Public Accountants*, 80 S. Ct. 16, 18 (1959).

Bankruptcy Rule 9020(b) merely provides that a hearing precede any determination of contempt occurring outside the presence of a bankruptcy judge. Because petitioner's motion was patently frivolous, no formal evidentiary hearing was

required. The disposition of petitioner's motion for contempt by the bankruptcy court below simply does not give rise to any issue of first impression. Nor do the decisions below support a contention that further review of this matter will assist in the administration of the Bankruptcy Code. The bankruptcy court, acting within its discretion, held a telephone conference, received written and oral arguments from the parties, and then issued an order denying the motion. No novel issue of law is present here.

CONCLUSION

The bankruptcy court correctly disposed of the petitioner's Motion for Contempt after providing the parties with an opportunity to be heard. No novel issues of law are before this Court and further review by this Court is not appropriate. Accordingly, the respondent Northwest Savings Bank, formerly known as The First National Bank of Centre Hall, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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No. 99-1153

In The

Supreme Court of the United States

October Term, 1999

I. PARKER HUFF,
Petitioner,

v.

NORTHWEST SAVINGS BANK,
f/k/a:
FIRST NATIONAL BANK OF CONTRE HALL,
Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Third Circuit

---

REPLY TO BRIEF IN OPPOSITION

I. Parker Huff, Pro Se

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Petitioner

Dated: February 18, 2000

12pp

QUESTIONS PRESENTED

1. Whether it is clear error when the bankruptcy court omits necessary and critical facts of record from it's findings and conclusions, resulting in an ultimate unpublished decision that squarely contradicts the prior published holding of the 3rd Circuit that is directly on point, thus requiring remand with instructions?

2. Whether, the bankruptcy court failure to hold the required Bankruptcy Rule 9020(b) hearing, mandated by the United States Supreme Court, pursuant to motion for contempt, for contemptuous acts committed outside the presence of the court, is clear reversible error?

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I. PRIOR STATE COURT LITIGATION HAS NO BEARING ON DISCHARGEABLE / NON-DISCHARGEABLE ISSUE.

The Respondent's brief is simply attempting to cloud the issues before this Court by trying to raise prior state court matters that are clearly NOT material to this Petition for Writ of Certiorari. Enforcing a bankruptcy court's discharge order in the face of a final state court judgment is permitted. *Local Loan Co. v. Hunt*, 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed. 1230 (1934).

The State Court litigation the Respondent cites in their brief rises from Respondent's prior State Court actions taken in violation of the discharge injunction. NONE of these prior actions and judgments cited by the Respondent raises the issue of non-discharge-ability. Likewise, NONE of the post-discharge claims made by the respondent in their petition of August 5, 1993 (See App. B, P.6b-12b) where ever determined, by any court, to be non-dischargeable. See *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 Pa. Super. (1995), *allocatur denied*, 681 A.2d 178 (Pa. 1996) *cert denied*, 520 U.S. 1210 (1997); *Huff v. Northwest Savings Bank*, No. 594 HBG 1998

(Pa. Super. Mar. 30, 1999), *allocatur denied*, No. 174 M.D. Misc. Dkt. 1999 (Pa. Oct. 27, 1999).

The Congress has clearly stated, and it is supported in all Circuits, that after §524 discharge, it is NOT the debtor's burden to have to defend any violation of the discharge or discharge injunction, in any court, by any unscrupulous creditor's attempt to circumvent the discharge and injunction. Rather, Congress has provided, and this Court has repeatedly supported the provision that if creditors believe they have a valid claim post-discharge, they may petition the Bankruptcy Court to have the claim be determined to be non-dischargeable, at which time the claim(s) would become fully enforceable. This premise is a fundamental principle of the Code, and without it the principle of the discharge would be meaningless and the effect of the Code useless.

Clearly, the Respondent's claims as set forth in the Petition for Writ pages 9-14, and Petitioner's Motion for Contempt have no lawful foundation ((App. To Brief at Docket No. 99-7027, (Appeal to Third Cir.) P. 51-61)), (See, App. B, P. 6b-17b, for more detail.). The Respondent had NO lien for said claims prior to the

discharge of June 24, 1993. The action taken by the Respondent on August 5, 1993, attempting to create a lien for these claims is clearly barred by the injunction. Further, the Respondent NEVER took any steps in any court to have said claims be determined non-dischargeable, and without such a determination none of the Respondent's arguments hold water.

II. THE REQUIREMENTS OF RULE 10 ARE FULLY MET.

The requirements of Rule 10 are clearly evident in this Petition and provide compelling need and sound reason to grant this Writ of Certiorari, in order to resolve the conflict of the holding below in the present matter with the prior published holdings of the Third Circuit and the decisions of this Court.

The Third Circuit wrongly applied *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) to the present matter in its opinion at page 4 (App. A, P. 11a).

In *Johnson*, the petitioners mortgage was in existence at the time of discharge, and thus: although the personal liability was discharged, the mortgage was determined by this Court to be a claim

that could be included in subsequent chapter 13 reorganization.

In the present matter, the Petitioner's mortgage was reduced to judgment, in 1989, one year prior to his filing bankruptcy (App. B, P. 4b-5b). At the time of discharge on June 24, 1993, by operation of Pennsylvania State Law and as held by the Pennsylvania Supreme Court (See, *Lance v. Mann*, 360 Pa. 26, 60 A.2d 35, 36 (1948)) the mortgage no longer existed to provide any basis for a claim. This holding is identical to and is fully supported by the Third Circuit in *In re Stendardo*, 991 F.2d 1089 (3rd Cir. 1993) at 1094, which remains the controlling published decision on this matter to this day.

The fact is the mortgage was reduced to judgment prior to the bankruptcy in the present matter. This fact was omitted by the Bankruptcy Court from its findings and conclusions (App. A, P.1a-3a), despite the fact that the Respondent had filed a Proof of Claim with the Court (including a copy of the mortgage, note, and foreclosure judgment) on July 5, 1990, and at hearing on June 12, 1991, was admitted the same into evidence (Document No. 63 at Docket No. 1-90-00917RJW) before the same Judge.

Likewise, the Bankruptcy Court not only omitted the existence of the foreclosure judgment, but also the fact that the foreclosure judgment DID NOT provide any basis for the Respondent's claims sued for on August 5, 1993.

Clearly, without a mortgage or a lawful basis for the Respondent's said claims, the *Johnson v. Home State Bank* holdings simply are not on point and do not apply to the present matter.

The Third Circuit then held that the Respondent did not attempt to hold the Petitioner personally liable in their August 1993 petition, citing *Insilco Corp. v. Rayburn*, 543 A.2d 120,123 (Pa. Super. Ct. 1988), saying the Respondent's subsequent judgment was strictly in rem (App. A, P. 11a).

This is simply NOT TRUE!

There is NO basis for the respondents August 1993 claims within the foreclosure judgment.

There is NO basis for these claims in the original mortgage.

What the Respondent really did, was to sue the Petitioner in State Court,

first to obtain a judgment against the Petitioner, then hoping to create a lien for their August 1993 claims they thought would be enforceable.

However, this action was barred by the Discharge. This position is further supported *In re Hunter*, 970 F.2d at 310; *In re Stephenson*, 96 B.R. 388, 389 n.1 (Bankr.S.D.Fla. 1988); 3 *Collier on Bankruptcy* ¶¶ 506.07, 524.01 (15th Ed. 1992); *In re Hunter*, 970 F.2d at 310-11.

Further demonstrating the absolute necessity for review in light of the Bankruptcy Court's clear omission of terms of the foreclosure judgment and the lack of a valid mortgage, of these holdings, is *In re Pavelich*, 229 B.R. 777 (9th Cir. BAP 1999) at 781-784, that ``...Congress was expressly making it possible for a discharged debtor to ignore a creditor's subsequent action in a non-bankruptcy court.'' 4 Lawrence P. King, et al., *Collier on Bankruptcy* ¶ 524.LH (15th ed. Rev. 1998); `` discharge is an absolute defense...'' *See* H.Rep. No. 91-1502, 91st Cong. 1-2 (1970); S.Rep. No. 91-117, 91st Cong. (1970); 116 Cong.Rec. 9549 (1970) (Statement of Cong. Wiggins); ``...void judgments can be collaterally

attacked...'' *Fernandez-Lopez*, 37 B.R. at 669; and lastly citing, ``The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.'' *Kalb*, 308 U.S. at 439, 60 S.Ct. 343.

III. ALL ISSUES RAISED IN THIS PETITION FOR WRIT OF CERTIORARI ARE PROPERLY REVIEWABLE BY THIS COURT PURSUANT TO 28 U.S.C. § 1254.

28 U.S.C. § 1254 states in pertinent part:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to a civil or criminal case, before or after rendition of a judgment or decree;

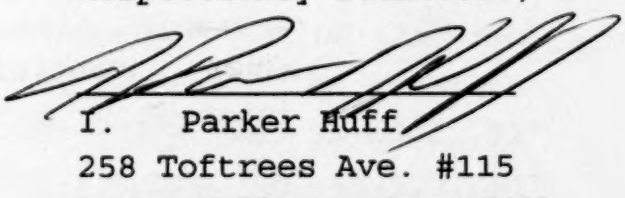
All issues raised in the Petitioner's Petition for a Writ of Certiorari where properly raised in his Appeal from the Final Order of the United

States District Court for the Middle District of Pennsylvania Dated December 23, 1998, at Docket No, 4:cv-98-1782, timely filed with the United States Court of Appeals for the Third Circuit at Case Docket No. 99-2027, and fully set out in Petitioner's Brief of Appellant pages 1-3, filed on April 12, 1999.

CONCLUSION

Without doubt, Stendardo is clearly the holding that must be applied to the present matter. The facts of the present matter mirror Stendardo. However, because the Bankruptcy Court and the appellate courts on review omitted the critical facts of record, both Courts reached the wrong conclusions. This clear error results in two opposite results from identical facts that cannot be accepted if continuity and credibility is expected from our Courts.

Respectfully submitted,



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